

HOUSE No. 4751

The Commonwealth of Massachusetts

PRESENTED BY:

Danielle W. Gregoire

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to Regulate Real Estate Appraisal Management Companies.

PETITION OF:

NAME:

Danielle W. Gregoire

DISTRICT/ADDRESS:

4th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act to Regulate Real Estate Appraisal Management Companies.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 112 of the General Laws, as appearing in the 2008 Official Edition is hereby amended by adding at the end thereof the following 14 new sections:-

Section 236. Definitions.

(a) As used in sections 237 through 249, inclusive, the following words shall have the following meanings, unless the context clearly requires otherwise:

“Applicant”, a person who applies to be registered as an appraisal management company in the Commonwealth.

“Appraisal management company”, a person that administers a network of certified and licensed appraisers in the Commonwealth and acts as a conduit to fulfill 1 to 4 family residential real estate appraisal assignments on behalf of mortgage lending institutions and other entities. For purposes of this definition, the phrase 'administers a network' includes recruiting appraisers, contracting with appraisers to perform appraisal assignments, negotiating fees with appraisers, providing administrative duties, such as receiving appraisal orders and appraisal reports, reviewing, and transmitting appraisal reports received from appraisers to the company's clients.

“Appraisal practice”, valuation services performed by an individual acting as an appraiser, including but not limited to appraisal, appraisal review, or appraisal consulting.

“Board”, the Massachusetts Board of Registration of Real Estate Appraisers under Section 92 of Chapter 13.

“Controlling person”, means one or more of the following: (1) an officer or director of an appraisal management company, or an individual who holds a 10 percent or greater ownership interest in an appraisal management company; (2) an individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal services and that has the authority to

enter into agreements with independent appraisers for the completion of appraisals; or (3) an individual who possesses the power to direct or cause the direction of the management or policies of an appraisal management company.

“Employee”, an individual who has an employment relationship with a person acknowledged by both the individual and the person, and who is treated as an employee for purposes of compliance with federal income tax laws.

“Employee in Charge” or “(EIC)”, a designated employee of the appraisal management company, who is a state certified appraiser, with the responsibilities and obligations to the board as set forth in section 241.

“Person”, an individual, sole proprietorship, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

“Registrant”, a real estate appraisal management company registered under this Act.

“Valuation Services”, services pertaining to all aspects of property value

(b) The definitions contained in section 173 of Chapter 112, Section 173 also apply. Section 237. Registration required of real estate appraisal management companies; exceptions.

(a) It shall be unlawful for any person in the Commonwealth without first registering with the Board under the provisions of this Act to:

(1) directly or indirectly engage or assume to engage in the business of real estate appraisal management,

(2) advertise or make representation that the person is engaging in or conducting the business of real estate appraisal management in the Commonwealth, or

(3) in any way act as or provide the services of an appraisal management company.

(b) It shall be unlawful for a person, as defined herein, to directly or indirectly engage or attempt to engage in business as an appraisal management company, to directly or indirectly engage or attempt to perform appraisal management services or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first being registered by the Board under the provisions of this Act, regardless of the person’s use of the term “appraisal management company”, “mortgage technology company”, or any other name.

(c) The provisions of this Act shall not apply to:

(1) Any agency of the federal government or any State or municipal government;

(2) Any person authorized to engage in business as a bank, farm credit system, savings institution, or credit union, under the laws of the United States, or of the Commonwealth, except

that an affiliated business, subsidiary, or joint venture of a bank, farm credit system, savings institution or credit union shall not be exempt from this Act;

(3) Any licensed real estate broker performing activities in accordance with Section 174B. of Chapter 112 of the General Laws. However, an exempt person does not include a real estate broker who receives compensation of any kind in connection with the referral or placement of an appraisal assignment;

(4) Any person that exclusively employs persons on an employer/employee basis for the performance of real estate appraisal services in the normal course of its business and such entity is responsible for ensuring that the real estate appraisal services being performed by its employees are being performed in accordance with Uniform Standards of Professional Appraisal Practice;

(5) Any person engaged in appraisal practice that has as its primary business the development of appraisals in Massachusetts in accordance with the Uniform Standards of Professional Appraisal Practice; or

(6) Any person engaged in appraisal practice that has as its primary business the development of appraisals in Massachusetts, but that in the normal course of business enters into an agreement with an independent contract appraiser for the performance of appraisals that the contracting entity cannot complete because of workload, the location or type of property.

Section 238. Rule making authority.

(a) The Board shall have the authority to adopt rules consistent with the provisions of this Act and the General Laws of the Commonwealth that are reasonable and necessary to implement, administer, and enforce the provisions of this Act, including the authority to:

(1) Prescribe forms and procedures for submitting information to the Board;

(2) Prescribe standards of practice for a person registered under this Act; and

(3) Prescribe standards for the operation, professional liability, error and omission and other insurance coverages, of real estate appraisal management companies.

Section 239. Qualifications for registration; duties of registrants.

(a) Any person desiring to be registered as an appraisal management company in the Commonwealth shall make written application to the Board on forms prescribed by the Board setting forth the applicant's qualifications for registration. The application shall be accompanied by the applicable fee under Section 6 of this Act, and any other information the Board deems necessary pursuant to rules adopted by the Board. Upon receipt of a properly completed

90 application and fee and upon a determination by the Board that the applicant is of good moral
91 character, the Board shall issue to the applicant a certificate of registration authorizing the
92 applicant to act as a real estate appraisal management company in the Commonwealth.

93 (b) An application for registration under this Act must include the following certifications
94 from the applicant:

95 (1) A certification that the applicant has a system and process in place to verify that a
96 person being added to the appraiser panel of the appraisal management company holds a license
97 in good standing in the Commonwealth issued pursuant to this Chapter;

98 (2) A certification that the applicant has a system in place to review the work of all
99 independent appraisers that are performing real estate appraisal services for the appraisal
100 management company on a periodic basis to ensure that the real estate appraisal services are
101 being conducted in accordance with the Uniform Standards of Professional Appraisal
102 Practice;

103 (3) A certification that the applicant maintains a detailed record of each service request
104 that it receives and the independent appraiser that performs the residential real estate appraisal
105 services for the appraisal management company; and

106 (4) A certification that the applicant has a system in place to verify that the lender/client
107 with whom they are conducting business is qualified to conduct business in the Commonwealth
108 of Massachusetts.

109 (c)(i) A person who, directly or indirectly owns more than 10 percent of an applicant for
110 registration, or (ii) any officer, controlling person, employee in charge or managing principal of
111 an applicant for registration, who has had a license or certificate to act as an appraiser or to
112 engage in any activity related to the transfer of real property refused, denied, canceled or revoked
113 in this state or in any other state, whether on a temporary or permanent basis or, who is not of
114 good moral character as determined by the Board, shall not be eligible for registration under this
115 Act.

116 (d) Each applicant for registration under this Act shall submit the name and address of the
117 applicant's registered agent located in the Commonwealth.

118 (e) Any registrant having a good faith belief that a real estate appraiser licensed in the
119 Commonwealth has violated applicable law or the Uniform Standards of Professional Appraisal
120 Practice (USPAP) or engaged in unethical conduct shall promptly file a complaint with the
121 Board.

(f) Fees shall be paid to a real estate appraiser in accordance with any contract between the registrant and the appraiser, but in no case later than 60 days of the date the appraisal is transmitted by the real estate appraiser to the registrant or the registrant's client. Appraisers are not to be prohibited by a lender, AMC or other third party, from recording the fee the appraiser was paid for the performance of the appraisal in the appraisal report. Appraisers are to be compensated at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised taking into account specific assignment conditions. The fee for the actual completion of an appraisal may not include a fee for management of the appraisal process or any activity other than the performance of the appraisal. Any management fees charged by an AMC or other third party must be for actual services related to ordering, processing or reviewing of appraisals performed. AMC and other third party fees must not exceed what is customary and reasonable for such services provided in the market area of the property being appraised.

Section 240. Controlling person.

Each appraisal management company applying to the board for registration in this state shall designate one controlling person that will be the main contact for all communication between the board and the appraisal management company. The controlling person may also be designated the employee in charge.

Section 241. Employee in charge.

In order to serve as the employee in charge for a registered AMC, a designee shall, in addition to continually holding a valid license issued by a state appraiser licensing authority as a state certified appraiser:

(a) not have had a license to practice as an appraiser or to engage in any activity related to the transfer of real property refused, denied, canceled or revoked in this state or in any other state;

(b) be of good moral character;

(c) submit to a state background investigation; and

(d) shall be responsible for:

(1) the selecting of appraisers for the performance of real estate appraisal services;

(2) have the responsibility of reviewing completed appraisals as part of the board file:

(2)(i) shall ensure clerical review is conducted on all appraisals completed within the renewal period; (2)(ii) shall randomly select a statistically significant number, but not less than five

percent, all fractions rounded up, of outsource appraisal reviews on appraisals completed within the renewal period; (2)(iii) outsource appraisal reviews shall be completed by an appraiser with licensure equal to or greater than that of appraiser that is being reviewed.

(3) maintaining required documentation as part of the board file.

The controlling person may also be designated the employee in charge.

Section 242. Vacancy in controlling person or employee in charge.

The appraisal management company shall file a form with the Board indicating the appraisal management company's designation of controlling person and employee in charge and the individual's acceptance of the responsibility. An appraisal management company shall notify the Board of any change in the appraisal management company's controlling person or employee in charge and shall have 30 days from the date a vacancy occurs in either position to designate a temporary or permanent replacement and, in the event a temporary designation is made, 90 days to appoint a permanent replacement. Any appraisal management company that does not comply with this section shall have the appraisal management company's registration suspended pursuant to Section 8 of this Act until the appraisal management company complies with this section. An individual operating an appraisal management company as a sole proprietorship shall be a certified general or certified residential appraiser and shall be considered the managing principal for purposes of this Act unless another managing principal is designated.

Section 243. Fees and renewals.

The following fees shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven and shall be collected by the board: (a) application fee; (b) initial license fee; (c) annual renewal fee; (d) change in managing principal; and (e) late renewal fee.

Section 244. Surety Bond.

In addition to the filing fee, each applicant for registration shall post with the board and maintain a surety bond in the amount of twenty thousand dollars (\$20,000). The bond shall:

(1) Be in the form prescribed by rule of the board; and

(2) Accrue to the state for the benefit of a claimant against the registrant to secure the faithful performance of the registrant's obligations under this Act.

The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the registrant may bring suit directly on the surety bond, or the board may bring suit on behalf of the party having a claim against the registrant. Consumer

claims are given priority in recovering from the bond. A deposit of cash or security may be accepted in lieu of the surety bond. A claim reducing the face amount of the bond shall be annually restored upon renewal of the registrant's registration.

Section 245. Prohibited acts.

(a) No employee, director, officer, managing principal or agent of an appraisal management company or any other third party acting as joint venture partner or independent contractor shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

(1) Withholding or threatening to withhold timely payment for a real estate appraisal report;

(2) Withholding or threatening to withhold future business from a real estate appraiser or demoting or terminating or threatening to demote or terminate a real estate appraiser;

(3) Expressly or impliedly promising future business, promotions, or increased compensation for a real estate appraiser;

(4) Conditioning the ordering of a real estate appraisal report or the payment of a real estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate requested from a real estate appraiser;

(5) Requesting that a real estate appraiser provide an estimated, predetermined, or desired valuation in a real estate appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of the appraisal report;

(6) Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or targeted amount to be loaned to the borrower; provided, however, a real estate appraiser should be provided with a copy of the sales contract for purchase transactions;

(7) Providing to a real estate appraiser, or any entity or person related to the appraiser, stock or other financial or non-financial benefits;

(8) Allowing the removal of a real estate appraiser from a list of qualified appraisers used by any entity without prior written notice to the appraiser. The notice shall include written evidence of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior or any violation of the Uniform Standards of Professional Appraisal Practice (USPAP) or State licensing standards;

(9) Engaging an appraiser who is not qualified to appraise the type of real property and property interests in accordance with the USPAP Competency Rule, including geographic competency;

(10) Any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, or impartiality; or

(11) Requesting or requiring a real estate appraiser to collect a fee from, or be compensated by, the borrower, homeowner, real estate agent, mortgage broker or any other third party in the provision of real estate appraisal services.

(b) No employee, director, officer, managing principal or agent of an appraisal management company or any other third party acting as joint venture partner or independent contractor shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

(1) Alter, modify, or otherwise change a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent;

(2) Alter, modify, or otherwise change a completed appraisal report submitted by an independent appraiser and must, in all cases, transmit a "true and exact copy" to the client and any intended users;

(3) Use an appraisal report submitted by an independent appraiser for any other transaction;

(4) Require an appraiser to sign any sort of indemnification agreement that would require the appraiser to defend and hold harmless the company, any software provider that the company requires an appraiser to use, or any other company that the company does business with from any liability, damage, losses, or claim; or

(5) Require an appraiser to provide the company with the appraiser's digital signature or seal.

(c) Nothing in this section shall be construed as prohibiting an appraisal management company from requesting that a real estate appraiser:

(1) Consider additional appropriate material property information;

(2) Provide further detail, substantiation, or explanation for the real estate appraiser's value conclusion; or

(3) Correct errors in the real estate appraisal report.

Section 246. Disciplinary authority.

(a) The Board may, by order, deny, suspend, revoke, or refuse to issue or renew a registration of an appraisal management company under this Act or may restrict or limit activities of a person who owns an interest in or participates in the business of an appraisal management company if the Board determines that an applicant, registrant, or any partner, member, manager, officer, director, managing principal, or person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant or registrant has done any of the following:

(1) Filed an application for registration that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact;

(2) Violated or failed to comply with any provision of this Act or any rules adopted by the Board;

(3) Been convicted of any felony or, within the past 10 years, been convicted of any misdemeanor involving any activity related to the transfer of real property, including, but not limited to mortgage lending or real estate appraisal or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing;

(4) Been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the real estate appraisal management business;

(5) Been the subject of an order of the Board or any other state appraiser regulatory agency denying, suspending, or revoking the person's license as a real estate appraiser;

(6) Acted as an appraisal management company while not properly licensed by the Board;

(7) Structured an appraisal assignment or a contract with an independent appraiser for the purpose of evading the provisions of this Act; or

(8) Failed to pay the proper filing or renewal fee under this Act.

(b) The Board may, by order, impose a civil penalty upon a registrant or any partner, officer, director, managing principal, or other person occupying a similar status or performing similar functions on behalf of a registrant for any violation of this Act. The civil penalty shall not exceed \$10,000 for each violation of this Act.

(c) In addition to other powers under this Act, upon finding that any action of a person is in violation of this Act, the Board may order the person to cease from the prohibited action. If the person subject to the order fails to appeal the order of the Board or the person appeals the order

286 and the appeal is denied or dismissed and the person continues to engage in the prohibited action
287 in violation of the Board's order, the person shall be subject to a civil penalty of not more than
288 \$25,000 for each violation of the order. The penalty provision of this section shall be in addition
289 to and not in lieu of any other provision of law applicable to a registrant for the registrant's
290 failure to comply with an order of the Board.

291 (d) Unless otherwise provided, all actions and hearings under this Act shall be governed
292 by Chapter 30A.

293 (e) If the Board has reasonable grounds to believe that an appraisal management
294 company has violated the provisions of this Act or that facts exist that would be the basis for an
295 order against an appraisal management company, the Board may at any time, either personally or
296 by a person duly designated by the Board, investigate or examine the books, accounts, records,
297 and files of any registrant or other person relating to the complaint or matter under investigation.

298 (f) The Board shall have the power to issue subpoenas requiring the attendance of persons
299 and the production of papers and records before the Board in any hearing, investigation, inquiry,
300 or other proceeding conducted by the Board. Upon the production of any papers, records, or
301 documents, the Board shall have the power to authorize true copies of the papers, records, or
302 documents to be substituted in the permanent record of the matter in which the papers, records,
303 or documents shall have been introduced in evidence.

304 (g) The Board may conduct routine examinations of the books and records of an appraisal
305 management company registered with the Board in order to determine the appraisal management
306 company's compliance with this Act and any rules adopted by the Board under the authority of
307 section 238. An appraisal management company shall maintain in the Commonwealth all books
308 and records related to real estate appraisal management services. An appraisal management
309 company shall pay any expenses incurred by the Board resulting from the Board's examination
310 of the appraisal management company's books and records.

311 Section 247. Records.

312 (a) The Board shall maintain a list of all applicants for registration under this Act that
313 includes for each applicant the date of application, the name and primary business location of the
314 applicant, and whether the registration was granted or refused.

315 (b) The Board shall maintain a current roster showing the names and places of business
316 of all registered appraisal management companies that lists the appraisal management
317 companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of

the Board; (ii) contain information regarding all orders or other action taken against the company, its officers, and other persons; and (iii) be open to public inspection.

(c) Every registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company as prescribed in rules adopted by the Board. All records shall be preserved for five years unless the Board, by rule, prescribes otherwise for particular types of records.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document.

Section 248. Penalty; injunctive relief.

The Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Act or rules adopted by the Board. The superior court shall have the power to grant these injunctions whether criminal prosecution has been or may be instituted as a result of the violations or whether the person is the holder of a registration issued by the Board under this Act.

Section 249. Background Checks

(a) The Board shall have the authority to conduct investigations and examinations for: (1) purposes of initial registration, registration renewal, registration suspension, registration conditioning, registration revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter, the Board shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to: (i) criminal, civil and administrative history information, including non-conviction data as specified in applicable provisions of the General Laws; (ii) personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and (iii) any other documents, information or evidence the Board deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence; and (2) the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the Board may review, investigate, or examine any licensee, individual or person subject to this chapter, in order to carry out the purposes of this chapter.

(b) If an applicant, registrant or managing principal's criminal history record check reveals one or more convictions, the conviction shall not automatically bar registration, provided the conviction is not related to the transfer of real property. The Board shall consider all of the following factors regarding the conviction:

- (1) The level of seriousness of the crime;
- (2) The date of the crime;
- (3) The age of the person at the time of the conviction;
- (4) The circumstances surrounding the commission of the crime, if known;
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled; and

- (6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.